

acknowledged this claim was time barred, as written claim was not submitted for this accident until August 13, 1998. Acknowledging that respondent failed to file an accident report as is required by K.S.A. 44-557, claimant had one year within which to submit written claim under K.S.A. 44-557(c).

Claimant also alleges accidental injury on or about June 24, 1998, when he was digging support holes and setting supports for launchers and receivers, and experienced a sudden onset of pain in his low back. Claimant's description of the accidents is uncontradicted and accepted by the Appeals Board, for preliminary purposes.

Claimant did not specifically discuss the accident with his employers, but he did testify that the supervisors for the respondent observed him walking in an unusual fashion after the accident and commented that he was walking like an old man. Claimant continued working until July 11, 1998, at which time he advised them his back had gotten so bad that he had to seek medical care in order to try to resolve the problem. Claimant left work July 11, 1998, underwent back surgery on August 31, 1998, and returned to work in November 1998 as a truck driver.

Respondent contends claimant has failed to provide notice, under K.S.A. 44-520, within ten days after the date of accident. However, claimant's testimony is that respondent's foremen and supervisors were aware of his ongoing problems, as they commented about the way he was walking and the problem he was having. K.S.A. 44-520 requires notice either within ten days of the date of accident or, if just cause is shown, within 75 days of the date of accident, unless "actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary."

The Appeals Board finds, for preliminary hearing purposes, that respondent's supervisors and foremen had actual knowledge of claimant's injury and physical problems, and the giving of notice under K.S.A. 44-520 is unnecessary.

Wherefore, the Appeals Board finds that claimant has proven accidental injury arising out of and in the course of his employment with respondent, and that notice was timely given for the June 24, 1998, accident and a series of accidents through July 11, 1998, claimant's last day worked before he underwent surgery.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Pamela J. Fuller dated November 30, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

c: Henry A. Goertz, Dodge City, KS
Vincent A. Burnett, Wichita, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director